

# ENVIRONMENTAL CRIME IN CHINA AND THE PHILIPPINES: A COMPARATIVE STUDY OF THEIR RESPECTIVE FISHERIES LAWS\*

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## ABSTRACT

Fisheries is important for both China and the Philippines, playing a major role in the economy of both countries. The former is the world's largest producer and exporter of fish, while the latter ranks high in fish, aquaculture, and in seaweeds and aquatic plants production. As such, both countries recognize the significance of fisheries as a natural resource that must be conserved and managed to ensure its sustainability for generations to come. To this end, both countries had adopted relevant national legislation, notable of which are their respective fisheries laws. Like most fisheries laws of other countries, fisheries law in China and the Philippines are largely administrative in nature. As such, failure to comply with such laws is treated more as administrative violations than crimes. However, the fisheries laws of both countries contain provisions under which offenders can be meted with criminal liabilities. This paper will attempt to examine provisions for criminal liabilities on the fisheries law of China and the Philippines.

**Keywords:** *environmental crime, China fisheries laws; Philippines fisheries laws*

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In the course of development, the environment is usually sacrificed but there comes a crucial point where further development could no longer be premised on destroying or neglecting the environment. Eventually, rapid development should give way to sustainable development and quantitative growth should give way to qualitative growth. Providing tougher penalties for activities that damage or harm the environment signals a firm resolve on the part of the state to take care of the environment. Hence, elevating environment as a key national agenda is gaining popularity among emerging economies which are already experiencing the adverse consequences of paying less attention to the environment in their decades-old drive for fast-paced socioeconomic development.

Alarming trends of environment degradation, including that of the seas and oceans, stimulate interest in the concept of environmental crime and spark calls for the establishment of an environmental criminal justice system to combat this growing problem. Water pollution and destructive fishing practices (e.g. use of dynamite and cyanide in fishing, harvesting of endangered marine species and corals, fishing in marine sanctuaries or marine protected areas) are just among the many serious threats and risks facing marine environment today and the years to come. As a regulator of social behavior, law plays an important place in addressing this malady. Raising the penalties for destroying the marine environment or for engaging in unsustainable fishing practices is one area that can

be explored. Criminalizing such actions will demonstrate a strong government commitment which can, in turn, perhaps deter and discourage would-be offenders. However, to date, while the concept is beginning to be considered, environmental crime, including marine environmental crime, has not yet received wide legal acceptance and approval from many states. Fisheries is one natural resource, economic sector and source of livelihood that is intricately tied and dependent on a sound marine environment. Therefore, there is a need to strike the proper balance between harnessing fisheries resources to meet growing demand and ensuring sustainability for the sake of posterity. And in this challenging endeavor, law can definitely come into play.

This paper will attempt to examine provisions for criminal liabilities on the fisheries laws of China and the Philippines. China's Fisheries Law promulgated in 1986 and was twice amended in 2000 and 2004 respectively. The Philippine Fisheries Code (Republic Act 8550), on the other hand, was passed in 1988 and is being proposed for amendment in 2014. Like most fisheries laws of other countries, fisheries laws in China and the Philippines are largely administrative in nature. As such, failure to comply with such laws is treated more as administrative violations than crimes. However, the fisheries laws of both countries contain provisions under which offenders can be meted with criminal liabilities.

### **Fisheries: A Key Natural Resource**

Fisheries is important for both China and the Philippines. The former is the world's largest producer and exporter of fish and is also fast becoming a major consumer<sup>1</sup>, while the latter is ranked seventh in world fish production, eleventh in aquaculture production and third in seaweeds and aquatic plants production respectively<sup>2</sup>. Both countries are also coastal states. China has an extensive coastline stretching 18,000 sq. kms. from the mouth of the Yalu River in Liaoning Province in the northeast to the mouth of Beilun River in Guangxi Zhuang Autonomous Region in the southeast<sup>3</sup>. The country also has numerous offshore islands and has a vast maritime area. The Philippines, on the other hand, is an archipelago made up of more than 7, 100 islands with a coastline of more than 36,000 sq. kms. and also possesses an extensive maritime domain. In addition, both countries also have numerous rivers, lakes and fishponds that provide for captured and cultivated fish. Fisheries also plays a major part in the economy of both countries. In China alone, 14 million

<sup>1</sup> Blomeyer, R., Goulding, I., Pauly, D., Sanz, A., & Stobberup, K. (2012). *The role of China in world fisheries*. Belgium: European Union. This document was requested by the European Parliament's Committee on Fisheries. Accessed 2 December 2014 from [http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/pech/dv/chi/china.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/pech/dv/chi/china.pdf)

<sup>2</sup> Department of Agriculture - Bureau of Fisheries and Aquatic Resources. *Philippine Fisheries Profile 2012*. Accessed 2 December 2014 <http://www.bfar.da.gov.ph/publication.jsp?id=2328#post>

<sup>3</sup> Li Qingxin. *Maritime Silk Road*. China Intercontinental Press, 2009.

people are employed as fishers and fish farmers<sup>4</sup>, while in the Philippines there are more than 1.6 million fishing operators<sup>5</sup>, notwithstanding thousands of municipal and artisanal (or small-scale) fishermen. Fish is also a major source of protein in the Chinese and Filipino diet. As such, both countries recognize the significance of fisheries as a natural resource that must be conserved and managed to ensure its sustainability for generations to come. To this end, both countries had adopted relevant national legislation, notable of which are their respective fisheries laws.

### **Comparing and Contrasting PRC and PH Fisheries Laws**

Both the Fisheries Laws of China and the Philippines cover a wide range of violations punishable by different types of penalties. This includes prohibition on the use of illegal, destructive and unsustainable fishing techniques (e.g. explosives, poison like sodium cyanide, electricity, etc) and methods (e.g. use of fine mesh nets); prohibition on the capture of certain types of species (e.g. in China, it is prohibited to catch undersized fish; and in the Philippines, it is prohibited to catch breeder or spawning fish) and; prohibition on fishing during closed season and in areas not designated for fishing (in the Philippines, for instance, it is illegal to fish in over-exploited

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<sup>4</sup> *The State of World Fisheries and Aquaculture 2012*. Food and Agriculture Organization of the United Nations, Rome. Accessed 2 December 2014 from <http://www.fao.org/docrep/016/i2727e/i2727e.pdf>

<sup>5</sup> *Philippine Fisheries Profile 2012*.

areas or in declared marine-protected areas or sanctuaries; and in China, it is illegal to fish in preservation areas for germ plasm resources). Both jurisdictions also prohibit foreign illegal fishing or poaching in their waters and also punish offenders responsible for marine pollution and destruction of the marine environment.

Table 1. *Selected Fisheries Law Violations and Corresponding Penalties – China*

Violation	Fine (RMB)	Confiscation of			Revocation of license	Criminal Liability	Provision
		Gains and illegal proceeds	Fishing facilities	Fishing vessel			
Fishing with explosives, poison, electricity, etc.	50,000 or less	Yes	Yes if case is serious	Yes in particularly serious cases	Yes if case is serious	Yes if act constitutes an offense	Art 38
Fishing in banned fishing areas	50,000 or less	Yes	Yes if case is serious	Yes in particularly serious cases	Yes if case is serious	Yes if act constitutes an offense	Art 38
Fishing during banned fishing periods	50,000 or less	Yes	Yes if case is serious	Yes in particularly serious cases	Yes if case is serious	Yes if act constitutes an offense	Art 38
Fishing using banned fishing facilities and banned fishing methods or nets smaller than the smallest size of mesh are used for fishing, or fishing undersized fish	50,000 or less	Yes	Yes if case is serious	Yes in particularly serious cases	Yes if case is serious	Yes if act constitutes an offense	Art 38
Production and sale of prohibited fishing facilities	100,000 or less	Yes	Yes	N/A	N/A	N/A	Art 38

Fishing without a license	100,00 or less	Yes	Yes if case is serious	Yes if case is serious	N/A	N/A	Art 41
Violation of provisions in fishing license on type of operation, location, time limit, quantity of fishing facilities	50,000 or less may be imposed	Yes	N/A	Yes if case is serious	Yes if case is serious	N/A	Art 42
Alteration, buying, selling, leasing or otherwise transfer of fishing license	50,000 or less may also be imposed	Yes	Yes if act constitutes an offense	N/A	Yes	Yes if act constitutes an offense	Art 43
Fishing in an preservation area for germ plasm resources of aquatic products without permission	10,000 or less may also be imposed	Yes	Yes	N/A	N/A	N/A	Art 45
Illegal production, import or export of aquatic fingerlings	50000 or less	Yes	N/A	N/A	N/A	N/A	Art 44
Feeding aquatic fingerlings without being examined, determined and approved	50000 or less	Yes	N/A	N/A	N/A	N/A	Art 44
Foreigner or a foreign fishing vessel engaging in fishery production or activities for investigation of fishery resources	500,000 or less may also be imposed	Yes	Yes	Yes if case is serious	N/A	Yes if act constitutes an offense	Art 46
Destruction of ecological environment of fishery water areas or causing fishery pollution accident	N/A	N/A	N/A	N/A	N/A	Legal liabilities shall be investigated in accordance with relevant provisions of Law on the Protection of Sea Environment and the Water Pollution Prevention and Control Law	Art 47

Violations of Fisheries Law by fishery administration authorities	N/A	N/A	N/A	N/A	N/A	Subject to administrative sanctions in accordance with law; if such acts constitute an offence, criminal liabilities shall be investigated in accordance with law	49
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While having many similarities and parallels in the nature of violations, Chinese and Philippine fisheries laws also contain unique provisions that are not mutually shared in their respective legal texts. For instance, Chinese fisheries law makes it illegal to produce and sell illegal fishing facilities, a clause not mentioned in Philippine fisheries law. In relation to destruction of the marine ecological environment, Chinese fisheries law also refers to corresponding liabilities as expressed in relevant laws, namely Marine Environment Protection Law<sup>6</sup> and the Water Pollution and Prevention Act<sup>7</sup>. Chapter V of

<sup>6</sup> Adopted at the 24th Meeting of the Standing Committee of the Fifth National People's Congress on August 23, 1982; revised at the 13th Meeting of the Standing Committee of the Ninth National People's Congress on December 25, 1999 and promulgated by Order No.26 of the President of the People's Republic of China on December 25, 1999. Accessed 19 December 2014 from [http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content\\_1384046.htm](http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1384046.htm)

<sup>7</sup> Adopted at the Fifth Meeting of the Standing Committee of the Sixth National People's Congress on May 11, 1984 and promulgated by Order No.12 of the President of the People's Republic of China on May 11, 1984; amended in accordance with the Decision of the Standing Committee of the Eighth National People's Congress on Revising the Law of the People's Republic of China on Prevention and Control of Water Pollution adopted at its 19th Meeting on May 15, 1996. Accessed 19 December 2014 from [http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content\\_1383966.htm](http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1383966.htm)



China's Fisheries Law (Amended) discusses legal liabilities. Most violations are punished through administrative penalties that range from confiscation of fishing gains and illegal proceeds, fines and, in serious cases, confiscation of the fishing facilities and fishing vessel and revocation of fishing license. Nevertheless, if the acts constitute an offense, criminal liabilities may come in. This could occur, for instance, in the following cases: 1) fishing with explosives, poison or electricity; 2) fishing in banned fishing areas or during banned fishing periods (this closed season for fishing allows fish stocks to naturally replenish, recover or multiply their numbers); 3) fishing using banned fishing facilities and methods (e.g. fine mesh nets); 4) alteration, buying, selling, leasing or otherwise transfer of fishing license; 4) engagement of foreigner or foreign fishing vessel in fishery production or investigation of fishery resources and; 5) violations of Fisheries Law committed by fishery administration officials or staff. The last mentioned provision serves as a stern warning to government officials who neglect their duties or are swayed by corruption while enforcing the law. Both Chinese and Philippine jurisdictions provide stiff penalties for poaching or foreign illegal fishing in their respective waters.

In the Philippines, Chapter VI of the Fisheries Code provides prohibitions and penalties. Similar to China, there is also a wide range of penalties depending on the seriousness of the violations committed including imposition of fines, confiscation of catch, fishing equipment

and fishing vessel and revocation of fishing license. One noteworthy form of punishment present in Philippine fisheries law but is absent in its Chinese counterpart text is imprisonment. In the Philippines, the maximum imprisonment term for someone who violated certain provisions of fisheries law could go as high as 20 years. Considering that fishing is an economic activity, many may criticize this form of penalty as being too harsh as such lengthy prison sentence would surely mean loss of livelihood for fisherfolk caught, affecting the families they support. However, from the vantage point of environmental protection, this is a welcome clause since it demonstrates strong state stand in punishing offenders of serious fisheries violations. It must be noted that this maximum imprisonment sentence is only reserved to those who fish or harvest marine life considered rare, endangered or threatened. This penalty is also not applicable to foreign fishermen who would be caught fishing in Philippine waters, although in practice those persons caught will be put in a separate detention facility while their case is being investigated.

In relation to criminal liability, Philippine fisheries law provides for only certain instances when actual use of explosives, poisonous or noxious substances or electrofishing devices for fishing resulted in physical injury or loss of human lives. In contrast, Chinese fisheries law, as discussed earlier, provides more conditions for investigating criminal liability relative to fisheries law violations. The Philippine

Fisheries Code also identifies punishable parties and their corresponding penalties. These include the fishing vessel captain, other high ranking officers of the vessel, master fisherman and even the corporation if the vessel is owned by such form of business entity. Chinese fisheries law does not make such enumeration of possible responsible offenders.

**Table 2. *Selected Fisheries Law Violations and Corresponding Penalties – Philippines***

Violation	Fine (P)	Imprisonment	Confiscation/forfeiture of			Revocation of license	Provision	Exception
			Catch	Fishing equipment	Fishing vessel			
Mere possession of explosive, noxious or poisonous substances or electrofishing devices for illegal fishing	N/A	6 months to 2 years	Yes	Yes	Yes	N/A	Sec 88 (The explosive, noxious or poisonous substances and/or electrical devices)	for research, educational or scientific purposes only and; 2) to eradicate predators in fishponds in accordance with accepted scientific practices and without causing adverse environmental impact in neighboring waters)
Actual use of explosives, noxious or poisonous substances or electrofishing devices for illegal fishing shall	N/A	5 to 10 years <sup>8</sup>	Yes	Yes	Yes	N/A		
Dealing in, selling, or in any manner disposing of, for profit, illegally caught/gathered fisheries species	N/A	6 months to 2 years	Yes	Yes	Yes	N/A		

<sup>8</sup> Without prejudice to the filing of separate criminal cases when the use of the same result in physical injury or loss of human life.

Use of fine mesh nets <sup>9</sup>	P2,000 to P20,000	6 months to 2 years	N/A	N/A	N/A	DA <sup>10</sup> may impose administrative fine and/or cancel his permit/license or both	Sec 89	Not apply to the gathering of fry, glass eels, elvers, <i>tabios</i> , and <i>alamang</i> and such species which by their nature are small but already mature to be identified in the implementing rules and regulations by DA
Use of active fishing gears in municipal waters <sup>11</sup> , bays and other fishery management areas	P2,000 to P20,000 for owner/operator of the vessel <sup>12</sup>	2 to 6 years for boat captain and master fisherman	Yes	N/A	N/A	N/A	Sec 90	N/A
Fishing with gear method that destroys coral reefs, seagrass beds, and other fishery marine life habitat <sup>13</sup>	P100,000 to P500,000	2 to 10 years	Yes	Yes (gear)	N/A	N/A	Sec 92	N/A

<sup>9</sup> Or both such fine or imprisonment or both at the discretion of the court. If the offense is committed by a commercial fishing vessel, the boat captain and the master fisherman shall also be subject to the penalties provided herein. The owner/operator of the commercial fishing vessel who violates this provision shall be subjected to the same penalties provided herein.

<sup>10</sup> Department of Agriculture (Note: the Bureau of Fisheries and Aquatic Resources is under this Department).

<sup>11</sup> Municipal waters include not only streams, lakes, inland bodies of water and tidal waters within the municipality which are not included within the protected areas as defined under Republic Act No. 7586 (The NIPAS or National Integrated Protected Areas Law), public forest, timber lands, forest reserves or fishery reserves, but also marine waters included between two (2) lines drawn perpendicular to the general coastline from points where the boundary lines of the municipality touch the sea at low tide and a third line parallel with the general coastline including offshore inlands and fifteen (15) kilometers from such coastline. Where two (2) municipalities are so situated on opposite shores that there is less than thirty (30) kilometers of marine waters between them, the third line shall be equally distant from opposite shore of the respective municipalities.

<sup>12</sup> Upon the discretion of the court. If the owner/operator is a corporation, the penalty shall be imposed on the chief executive officer of the Corporation. If the owner/operator is a partnership, the penalty shall be imposed on the managing partner.

<sup>13</sup> Or both such fine or imprisonment or both at the discretion of the court. Penalty is meted to operator, boat captain, master fisherman, and recruiter or organizer of fishworkers.

Use of superlights <sup>14</sup> in municipal waters or in violation of the rules and regulations which may be promulgated by DA on the use of superlights outside municipal waters <sup>15</sup>	P5,000 per superlight	6 months to 2 years	N/A	Yes (super-light, gear)	Yes	N/A	Sec 93	N/A
Fishing in over-exploited fishery area <sup>16</sup>	equivalent to the value of catch or P10,000 whichever is higher	6 months	Yes	Yes (fishing gears)	N/A	Yes (automatic)	Sec 86	N/A
Fishing in overfished area and during closed season <sup>17</sup>	P6,000	6 months & 1 day to 6 years	Yes	N/A	N/A	Yes	Sec 95	N/A
Fishing in fishery areas declared by DA as fishery reserves, refuge and sanctuaries	P2,000 to P20,000	2 to 6 years	Yes	N/A	N/A	Yes	Sec 96	N/A
Fishing or taking rare, threatened or endangered species as listed in the CITES <sup>18</sup> and as determined by DA <sup>19</sup>	P120,000	12 to 20 years	Yes	N/A	N/A	Yes	Sec 97	N/A

<sup>14</sup> Also called magic light, is a type of light using halogen or metal halide bulb which may be located above the sea surface or submerged in the water. It consists of a ballast, regulator, electric cable and socket. The source of energy comes from a generator, battery or dynamo coupled with the main engine.

<sup>15</sup> Or both such fine or imprisonment or both at the discretion of the court.

<sup>16</sup> Penalty is meted to any commercial fishing boat captain or three (3) highest officers of the boat.

<sup>17</sup> Imprisonment and/or fine.

<sup>18</sup> CITES – Convention on International Trade in Endangered Species of Wild Fauna and Flora.

<sup>19</sup> Imprisonment and/or fine.

Catching, gathering, capturing or possessing mature milkfish or "sabalo" and such other breeders or spawners of other fishery species as may be determined by DA	P80,000	6 months & 1 day to 8 years	Yes	Yes	N/A	Yes	Sec 98	Catching of breeders/ spawners for local breeding purposes or scientific or research purposes may be allowed subject to guidelines to be promulgated by DA
Gathering and marketing of shell fishes which is sexually mature or below the minimum size or above the maximum quantities prescribed for the particular species <sup>20</sup>	2,000 to 10,000	1 month & 1 day to 6 months	Yes	Yes	Vessel can be impounded	Yes <sup>21</sup>	Sec 103 (c)	N/A
Export of breeders, spawners, eggs or fish as prohibited	N/A	8 years	Yes or fine equivalent to double the value of the same	N/A	N/A	Yes and/or export license/ permit	Sec 99	N/A
Import-export of fish or fishery species <sup>22</sup>	P80,000	8 years	Yes (non-live fisheries in favor of DA for proper disposition) and destruction of live fishery species	N/A	N/A	N/A	Sec 100	N/A

<sup>20</sup> Or both such fine and imprisonment upon the discretion of the court.

<sup>21</sup> DA Secretary is empowered to impose an administrative fine of not more than P10,000 or to cancel his permit or license, or to impose such fine and to cancel his permit or license, at the discretion of the Secretary.

<sup>22</sup> Violator of this provision shall be banned from being members or stock holders of companies currently engaged in fisheries or companies to be created in the future, the guidelines for which shall be promulgated by DA.

Violation of catch ceilings as determined by DA <sup>23</sup>	P50,000	6 months & 1 day to 6 years	Yes	Yes	N/A	Yes	Sec 101	N/A
Exploitation, occupation, production, breeding, culture, capturing or gathering fish, fry or fingerlings of any fishery species or fishery products, or engaging in any fishery activity in Philippine waters without a license, lease or permit <sup>24</sup>	equivalent to the value of catch or P10,000 whichever is higher	6 months	Yes	Yes (fishing gears)	N/A	Yes (automatic)	Sec 86	Fishing for daily food sustenance or for leisure which is not for commercial, occupation or livelihood purposes may be allowed
Engaging in any commercial fishing activity in municipal waters by a person not listed in the registry of municipal fisherfolk	P500 (for a municipal fisherfolk)	N/A	Yes	N/A	N/A	N/A	Sec 86	N/A
Foreign person, corporation or entity fishing or operating any fishing vessel in Philippine waters	US\$100,000 <sup>25</sup>	N/A	Yes	Yes	Yes	N/A	Sec 87	N/A

<sup>23</sup> Imprisonment and/or fine.

<sup>24</sup> Penalty is meted to any commercial fishing boat captain or three (3) highest officers of the boat.

<sup>25</sup> DA is empowered to impose an administrative fine of not less than US\$50,000 but not more than US\$200,000 or its equivalent in the Philippine currency.

Sale or export of white sand, silica, pebbles and any other substances which make up any marine habitat <sup>26</sup>	not less than P100,000 to P500,000	2 to 10 years	Yes (of substance taken from marine habitat)	N/A	N/A	N/A	Sec 92	N/A
Sale or export ordinary precious and semi-precious corals, whether raw or in processed form <sup>27</sup>	P2,000 to P20,000	6 months to 2 years	Yes (of subject corals) <sup>28</sup>	N/A	Yes	N/A	Sec 91	Scientific or research purposes.
Conversion of mangroves into fishponds or for any other purposes <sup>29</sup>	P80,000	6 years and 1 day to 12 years	N/A	N/A	N/A	N/A	Sec 94	N/A
Obstruction to navigation or flow and ebb of tide in any stream, river, lake or bay <sup>30</sup>	2,000 to 10,000	1 month & 1 day to 6 months	Yes	Yes	N/A	Yes <sup>31</sup>	Sec 103 (d)	N/A
Construction and operation of fish corrals/ traps, fish pens and fish cages without permit <sup>32</sup>	2,000 to 10,000	1 month & 1 day to 6 months	Yes	Yes	N/A	Yes <sup>33</sup>	Sec 103 (e)	N/A

<sup>26</sup> Or both such fine and imprisonment at the discretion of the court.

<sup>27</sup> Or both such fine and imprisonment at the discretion of the court.

<sup>28</sup> The confiscated corals shall either be returned to the sea or donated to schools and museums for educational or scientific purposes or disposed through other means.

<sup>29</sup> Imprisonment and/or fine. If the area requires rehabilitation or restoration as determined by the court, the offender should also be required to restore or compensate for the restoration of the damage.

<sup>30</sup> Or both such fine and imprisonment upon the discretion of the court.

<sup>31</sup> DA Secretary is empowered to impose an administrative fine of not more than P10,000 or to cancel his permit or license, or to impose such fine and to cancel his permit or license, at the discretion of the Secretary.

<sup>32</sup> Or both such fine and imprisonment upon the discretion of the court.



Obstruction of any defined migration paths of migratory species, in areas including, but not limited to river mouths and estuaries <sup>34</sup>	50,000 to 100,000	7 to 12 years	N/A	N/A	N/A	Yes	Sec 105	N/A
Aquatic Pollution	P80,000 <sup>35</sup>	6 years & 1 day to 12 years	N/A	N/A	N/A	N/A	Sec 102	N/A
Hindering or obstructing a fishery law enforcement officer from performing his duty	P10,000	N/A	N/A	N/A	N/A	Registration, permit and/or license of vessel, including license of the master fisherman shall be canceled	Sec 106	N/A

Philippine law gives a great degree of discretion to courts in meting out penalties for transgressing fisheries law and regulations. For instance, the court may decide whether to impose both fine and imprisonment to an offender or only fine or only imprisonment depending on how serious or grave the nature and extent of the offense is. The extent of imposition of penalties is at times also at the discretion of the Secretary of the Department of Agriculture (DA),

<sup>33</sup> DA Secretary is empowered to impose an administrative fine of not more than P10,000 or to cancel his permit or license, or to impose such fine and to cancel his permit or license, at the discretion of the Secretary.

<sup>34</sup> Or both imprisonment or fine at discretion of court. Dismantling of obstruction shall be at offender's own expense.

<sup>35</sup> Plus an additional fine of P8,000.00 per day until such violation ceases and the fines are paid.

under which the Bureau of Fisheries and Aquatic Resources (BFAR) operates as an attached agency. Discretion has its merits since it allows for flexibility in light of different circumstances of each case. However, it may also be vulnerable to corruption. Precedent cases and further administrative guidelines from DA-BFAR are utilized to avoid arbitrariness and ensure consistency in making rulings. Exceptions were also provided in some sections.

Philippine fisheries law makes use of the doctrine of *prima facie*, a Latin expression that literally means at “first sight.” For instance, Section 86 states that “Discovery of any person in an area where he has no permit or registration papers for a fishing vessel shall constitute a *prima facie* presumption that the person and/or vessel is engaged in unauthorized fishing.” This means that the mere presence of a fisherman or a fishing vessel in an area where he has no papers to show that he can fish is already an assumption against him for unauthorized fishing. As such, without asking, he can be apprehended by appropriate maritime law enforcement authorities right there and then and be subjected to investigation. Another occasion where the *prima facie* doctrine comes into use is in Section 87 which provides that “The entry of any foreign fishing vessel in Philippine waters shall constitute a *prima facie* evidence that the vessel is engaged in fishing in Philippine waters,” making it a legitimate target for arrest and investigation. Finally, Sec 88 (1) says that “The discovery of dynamite, other explosives and chemical

compounds which contain combustible elements, or noxious or poisonous substances, or equipment or device for electrofishing in any fishing vessel or in the possession of any fisherfolk, operator, fishing boat official or fishworker shall constitute *prima facie* evidence, that the same was used for fishing in violation of this Code. The discovery in any fishing vessel of fish caught or killed with the use of explosive, noxious or poisonous substances or by electricity shall constitute *prima facie* evidence that the fisherfolk, operator, boat official or fishworker is fishing with the use thereof.” With this *prima facie* doctrine, the burden of proof for showing that one is not guilty of violating relevant provisions of the Code shifts from the law enforcement authority to the suspected offender. *Prima facie* was not mentioned in Chinese fisheries law.

## Conclusion

Fisheries law is one expression of a state's regard for the marine environment. Fisheries is at a nexus of commercial, socioeconomic and environmental interests. And in order to regulate or balance these interests which may sometimes conflict or compete with one another leading to unwanted consequences, policy and law should necessarily intervene. A review of the Fisheries Law of China and the Philippines showed many similarities, but it also illustrated differences. Imprisonment as a form of penalty and the doctrine of *prima facie* suggests a strong commitment on the part of the

Philippine government to protect the marine environment. On the part of China, providing for several instances for examining criminal liability and providing penalties for fisheries administration officials and staff who would not strictly implement the fisheries law signal the determination of the state to protect marine environment.

However, both states still have a long way to go in developing their marine environment criminal justice system. Some say that the penalties, especially the fines, are outdated and do not reflect the true costs of destroying the marine life and habitat. As such, a review of the penalties with the aim of ensuring that they serve as strong deterrents to violations, while at the same time ensuring stability and sustainability of the fishing industry, should be made. Strict implementation and adherence to the law must also be made and both governments may also create positive incentives for fisherfolk to contribute in protecting the marine environment. This can be done through education and information dissemination campaigns. Cultivating high value in-demand but critically endangered marine species instead of capturing them in the wild is also one way of ensuring lucrative livelihood and state scientific research and technology assistance can be used to this end.

In sum, the fisheries laws of both countries should create conditions that do not only penalize violations, but also encourage stakeholders, such as people and industry dependent on fishing, to conduct their fishing enterprise while conscientiously observing their

respective duties and obligations to ensure a win-win compromise between their livelihood, the environment and the future.

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